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**IN ARBITRATION PROCEEDINGS
PURSUANT TO AGREEMENT BETWEEN THE PARTIES**

IN THE MATTER OF A CONTROVERSY

BETWEEN:

**MONTEREY COUNTY DEPUTY
SHERIFFS ASSOCIATION (OE 3), UNION,
and
MONTEREY COUNTY SHERIFF'S
DEPARTMENT, EMPLOYER,**

**ARBITRATOR'S OPINION
AND DECISION**

**GRIEVANCE ON BEHALF OF
JENNIFER DAHMEN**

CSMCS Case # ARB-04-2806

APPEARANCES:

On behalf of the Union:
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1 **A. ISSUE**

2 Was Grievant entitled to mileage reimbursement and payment for her time spent
3 driving from the Salinas courthouse to the King City courthouse while she was assigned
4 as King City Bailiff three days per week?

5 **B. RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING**
6 **AGREEMENT**

7 **9 GRIEVANCE PROCEDURE**

8 **9.2 Definition**

9 A grievance shall be defined as a claim of a violation or inequitable
10 application of written department-wide policy or County rules, regulations,
11 resolutions, ordinances, or this memorandum of understanding by an
employee or group of employees adversely affected thereby but shall not
include the following:

12 . . .

13 **9.3.2 Grievance Forms**

14 . . .

15 Grievance forms must explicitly specify the act(s) or omission(s) being
16 grieved; the alleged negative impact upon the grievant, the policy or the
particular section of the agreement, rule, resolution or ordinance, the
violation of which is being alleged as the basis for the grievance, and the
remedy requested.

17 **9.3.3 Modifications**

- 18
- 19 1. No modifications in the basic violation being alleged pursuant to the
20 immediately preceding paragraph shall be made subsequent to
21 filing unless mutually agreed to by both the County and the grievant
or the grievant's representative. However, corrections in citations or
other clarifying amendments can be made at any time by the
grievant or the grievant's representative.

22 **10 Work Schedule**

- 23 A. Nothing herein shall be construed as a guarantee of a minimum number of
24 hours of work per day or per week, or days of work per week. Nothing
herein shall be construed to modify in any manner whatsoever a workday
or work week as defined by the sheriffs Department.

- 25 B. Subject to the above provision, employees shall be scheduled to work on
regular work shifts having regular starting and quitting times. Except for

emergencies, work schedules shall not be changed without ten (10) calendar days written prior notice to the affected employee(s).

22 COUNTY RIGHTS

The County will continue to have, whether exercised or not, all the rights, powers and authority heretofore existing, including, but not limited to the following: determine the standards of services to be offered by the Sheriff's Department and District Attorney's Office; determine the standards of selection for employment, direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; issue and enforce rules and regulations; maintain the efficiency of governmental operations; determine the methods, means and personnel by which the Sheriff's Department and the District Attorney's Office operations are to be conducted; determine the content of job classifications; exercise complete control and discretion over its organization and the technology of performing its work; and fulfill all of its legal responsibilities. All the rights, responsibilities and prerogatives that are inherent in the County by virtue of statutory and charter provisions cannot be subject to any grievance or arbitration proceeding.

Further, the exercise by the County through its Board and management representatives of its rights hereunder shall not in any way, directly or indirectly, be subject to the grievance procedure set forth herein.

C. RELEVANT PROVISIONS OF THE EMPLOYER'S POLICIES

Monterey County Personnel Policies & Practices Resolution, No. 98-394

Section A.18.1 Mileage Reimbursement – General Provisions

Any officer or employee of the County of Monterey who is required to operate his or her own or privately owned vehicle for the execution of official duties shall be allowed, reimbursed and paid the Internal Revenue Service reimbursement rate for each mile necessarily traveled each month

Monterey County Travel Policy

III. Definitions

F. Home

"Home" means the actual dwelling place of the County traveler without regard to any other legal or mailing address.

1 G. Main or Regular Place of Work

2 "Main or regular place of work" means the principal place of
3 business for the County employee or the principal location to
4 which the County volunteer is assigned to work for the
5 County. This may be the place at which s/he spends the
6 largest portion of his/her regular County workday or working
7 time or, in the case of field workers, the assigned
8 location/headquarters to which s/he returns upon completion
9 of regular or special assignments.

7 H. Temporary Work Location

8 "Temporary work location" means the place where the
9 County employee or volunteer is assigned on an irregular or
10 short-term basis, generally a matter of days or weeks.
11 County travelers attending conferences, meeting or training
12 sessions away from the main or regular place of work or field
13 workers conducting field work at off-site locations does not
14 normally constitute assignment to another site.

12 IV. Authorization to Travel

13 B. In-County Travel

14 County employees are authorized to travel within the County
15 when said travel is required by the department and
16 considered a part of the routine, day-to-day official duties of
17 the employee as defined and authorized by the department
18 head or his/her designee. All other in-County travel requires
19 advance authorization by the department head or his/her
20 designee.

19 V. Travel Expenses

20 A. General Conditions

- 21 1. County travelers are entitled to submit a claim for actual and
22 necessary expenses for transportation, meals, lodging, and
23 incidentals for authorized travel, subject to the conditions set
24 forth in this travel policy, whenever the expenses are
25 incurred as part of his/her official duties and authorized
26 because the County traveler is required to :

- 27 a. work excessively long hours away from main or
28 regular place of work; or

- b. work at a project location sufficiently distant from main or regular place of work to require overnight lodging; or
- c. attend a meeting in the performance of his/her official duties in which a meal is served; or
- d. travel on very limited notification; or
- e. attend a school, training, convention, or meeting.

2. Notwithstanding Section 1 above, claims shall be paid subject to the rules set forth in this policy and statutory law. Eligibility to submit a claim does not automatically entitle the claimant to reimbursement for any and all expenses.

B. Transportation Expenses

2. Vehicle Transportation

...

a) Private Vehicle

(4) County employee mileage to the regular or main place of work from home, and back, is considered commuting and may not be claimed.

(5) County employee mileage to the temporary work location from home, and back, is considered commuting and may not be claimed except in the following cases:

(a) if the County employee is required to report to the regular or main place of work before reporting to the temporary work location, s/he is eligible for mileage from the regular or main place of work to the temporary work location;

(b) if the County employee is required to report to the regular or main place of work after working at the temporary work location and before going home, s/he is eligible for mileage from the temporary work location to the regular or main place of work.

Sheriffs Department "Departmental Travel" Policy

305.01

Departmental travel is travel by a member outside his/her duty station/bureau in which the departmental mission and/or objectives are being pursued. Department travel involves expenditures for transportation, meals and overnight lodging and requires the use of county funds to support the travel. Departmental travel may be in the following categories:

- A. Training or operational assignments.
- B. Conferences and meeting.
- C. Special departmental assignments or business meetings.
- D. Extradition/investigative operations.

305.02

All departmental travel requires prior approval by a Bureau Chief.

305.03

Expenses for meals incurred while in Monterey County, attending functions of any kind cannot be paid unless approval is first obtained from the Sheriff or a Chief Deputy.

- A. Approval may be given where a lunch is mandatory to the meeting and it is a function directly relating to department business.
- B. Meals for schools, seminars, or conferences within Monterey County where there is a lunch break will not be paid by the County.

305.04

This is not intended to conflict with county personnel ordinances or memorandums of understanding regarding reimbursement for expenses.

Sheriffs Duty Time Policy

203.01

Duty time is defined as those regular hours in which an Office member is in the performance of requirements and duties of the Sheriff.

203.04

Personnel shall allow sufficient time to prepare themselves and report for duty at the designated place in proper dress no later than the designated starting time. Repeated failure to report for duty promptly at the time directed shall be deemed Neglect of Duty.

1 within the purview of Section 205.03 D and shall result in
2 disciplinary action.

3
4
5 **D. FACTS**

6 Grievant has been employed by the Employer as a deputy for fifteen years, and a
7 bailiff for 11 years. A bailiff is selected by a unique procedure, and may be dismissed at
8 will by the assigned judge. Grievant has been the bailiff for Judge Gary Meyer for eight
9 years. When assigned to a judge, the bailiff remains with that judge in whatever court
10 the judge is assigned to sit. Following that practice, Grievant first worked in Monterey
11 with Judge Meyer, then she worked in Salinas with him.

12 The King City courts, at one time, operated five days per week. Due to budget
13 constraints, the court schedule was reduced to three days per week, and no trials are
14 held there. From December 2003 until July 2005, Judge Meyer was assigned to sit at
15 the King City courthouse on Tuesday, Wednesday and Thursday. On Monday and
16 Friday, Judge Meyer was assigned to sit at the Salinas courthouse. This was
17 apparently the result of a regular rotation of judges to the various courts in the County.
18 As Judge Meyer's bailiff, Grievant was given the same schedule.

19 Shortly after beginning this schedule, Grievant raised the issue of mileage
20 reimbursement and travel time with her commander.¹ This matter was pursued
21 informally for some time, and a grievance was filed on April 12, 2004. The grievance
22 was discussed and pursued through the grievance procedure, and on September 8,
23 2004, the Union appealed the grievance to arbitration. The arbitration hearing was held
24 on July 14, 2005.

25 ¹ UN EX 1, pp 12-15, a January 9, 2004 memo from Grievant to Commander McLaughlin

1 Grievant's practice while working as a bailiff has been to store her uniform shirt,
2 her gun and other required uniform gear in a locker provided to her at the courthouse.
3 She travels to and from work wearing her uniform boots and her uniform pants, but
4 otherwise dressed in civilian clothes. This is allowed by policy. A deputy is also
5 allowed to carry his or her gear in the trunk of the car, and to store it at home.

6 In adjusting to the work schedule of Monday-Friday in Salinas and Tuesday-
7 Wednesday-Thursday in King City, Grievant testified:

8 Monday morning I would start out in Salinas and so at the end of the day I
9 would leave my duty belt, my gun, my shirt, in the locker. Tuesday
10 morning, instead of going directly from my home to King City, I'd go to
11 Salinas to the locker, pickup my duty belt, my gun, my shirt, my vest, and
transport all of the equipment to King City. And at the end of the day, I
would have to wear that home, bring it home, or drop it in the locker. I'd
prefer to drop it in the locker in Salinas.²

12 Asked why she preferred to leave her gear in her locker, Grievant testified:

13 Because I have a toddler child and it doesn't need to be around him.³
14

15 She later was given access to a locker in King City, so on Tuesday and
16 Wednesday evening, since she would be returning to King City the following day, she
17 stored her gear in her King City locker.

18 Deputy District Attorneys and Public Defenders who work in Salinas also are
19 expected to travel to King City. The district attorneys are provided a county vehicle to
20 drive and the Union claims that public defenders receive mileage reimbursement.
21 These county employees are not in the same bargaining unit as Grievant. Also, they are
22 considered professional employees, so do not receive overtime compensation.

23
24 ² TR, p. 13:7-15

25 ³ TR 13:17-18. Grievant is married to Doug Dahmen, an Investigative Sergeant employed by the
employer. Sergeant Dahmen has several weapons, and keeps some of them at the couple's home, in a
gun safe.

1 Doug Dahmen, an Investigative Sergeant employed by the Employer, was
2 President of the local from 1998 to 2003. He was involved in the resolution of
3 grievances during that time. Dahmen testified that he was told by Deputy Stewart that
4 during the time he served as bailiff for a County Commissioner, he was "reimbursed for
5 his mileage"⁴ for his travel between courthouses. Dahmen described his understanding
6 further:

7 Q. Well, let's take the Marina to King City example. Do you know whether that
8 was something that occurred in the fashion where he would report to King City
9 first thing in the morning for Court, or whether Court would be held in Marina in
the morning and then he would move to King City for an afternoon court session?

10 A. I don't recall the specifics. I was led to believe that he had a single station
11 that he reported at and that he traveled from that location, is what was
reimbursable.

12 Q. In other words, if he moved Court locations during the work day, after Court
13 had already been convened for some time in one location, he moved to another
location, he got mileage for that, didn't he?

14 A. He might very well, yes.

15 Q. And that's the situation you're talking about when you say Deputy Stewart
16 received mileage for his travel, correct?

17 A. No, I believe the situation I'm talking about was that if he reported
18 somewhere else other than Marina, he was getting compensated for mileage. I
19 don't know all the particulars as to how and why. I know that sometimes they
were able to take vehicles belonging to the Sheriff's Department if one is
available, and other times they don't have vehicles available.⁵

20 Dahmen also testified that at one point Stewart stopped receiving mileage
21 reimbursement, but Stewart did not file a grievance so the Union did not pursue the
22 issue. Burt Liebersbach, Chief Deputy of the Custody Operations Bureau, testified that

24 ⁴ TR 14:22

25 ⁵ TR 52:23-25, 53:1-22

1 Stewart was allowed use of a county vehicle for travel between courthouses when he
2 was expected to perform this travel during his workday. Liebersbach further testified
3 that since Stewart now reports to one courthouse some days of the week and to another
4 courthouse other days of the week, and is not changing courthouses during the day, he
5 is not provided a vehicle.

6 Dahmen testified that the Union did pursue a grievance concerning the Special
7 Enforcement Unit. He testified that the unit has deputies assigned to Monterey and to
8 Salinas; that the deputies were being assigned on a daily basis to travel from Monterey
9 to Salinas, or Salinas to Monterey, as a case developed; that the deputies were denied
10 travel time for these changes; and that the grievance was resolved by the department
11 agreeing that the deputies would be assigned to one station which would be considered
12 the primary station and if the deputies were directed to travel to the other station they
13 would be paid travel time. Further detailing the situation, Dahmen testified:

14 Q. Okay. Question for you, how many days notice were they given of the need
15 to, for example, be at the King City Faire for gang enforcement detail?

16 A. Well, each situation varied, sometimes they were given several days notice,
17 sometimes it was a spontaneous event, depending on the circumstances.

18 Q. So, you don't know whether or not they were given the contractually
19 required ten days notice?

20 A. Well, if it had been given a ten day notice and all of their equipment had
21 been relocated to that location and they were able to go to that location and
22 dress in their equipment, then there would have been no basis for the grievance.
23 My recollection is that those things were not done, so they had to literally prepare
24 themselves at their host station and then travel to whatever venue it was, in your
25 example the King City Faire, and that they were declined travel time from point A
to point B. That was the nature of the grievance.⁶

⁶ TR 55:7-24

1 Dahmen also testified about the AT&T grievance, and stated that deputies who
2 were assigned to work the golf tournament were not paid for all time spent in traveling to
3 and from that assignment; that the grievance was resolved by the employer agreeing to
4 pay deputies for all time spent in traveling from their home station to the tournament.
5 UN EX 10, consisting of two pages, is the original written grievance and the grievance
6 settlement.

7 Chuck Monarque, Captain of the Enforcement Operations Bureau, testified that
8 he was involved in the AT&T grievance, while serving in Internal Affairs. Monarque
9 testified that the Employer settled the grievance based upon verification that the time
10 claimed by the deputies was in fact worked by them.

11 The parties stipulated that if Sue McCall, Finance Manager for the District
12 Attorneys Office, were called and testified, she would testify that District Attorneys who
13 are assigned to Salinas but must travel to King City for court appearances are required
14 to report to the Salinas office to obtain files and other materials for court. She would
15 further testify that they are then assigned a county vehicle to use for travel to King City.

17 **E. POSITION OF THE UNION**

18 Grievant's travel to King City was in furtherance of Employer business and not
19 part of her regular commute. Therefore she should be reimbursed time and mileage.
20 PP & PR Section A.18 is the basic rule which applies here, and provides for this
21 payment when an employee travels "...outside his/her duty station..." and this includes
22 "...special departmental assignments..." Though this policy does exclude the
23 employee's commute, Grievant's travel was not a commute.

24 Under the Employer's policy, an employee may have only one main or regular
25 place of work. This is defined as the "...principal place of business for the County

1 employee.” Past practice also supports this. A previous grievance resolution supports
2 the argument that deputies can have only one main place of duty. The Employer’s
3 responses in this grievance establish that Grievant had a “split duty” assignment,
4 working for two days per week in Salinas, and three days per week in King City.

5 Grievant’s main place of duty was Salinas. King City was a satellite courthouse.
6 No trials are held there, the support staff is limited, and the court is open only three days
7 per week. Grievant’s payroll came out of Salinas. Her interoffice mail goes to Salinas.
8 The Employer considers other employees, the attorneys in the District Attorney’s office
9 and the Public Defender’s office, to be based in Salinas, though they also travel to King
10 City as did Grievant.

11 Since Grievant’s primary place of business is Salinas, her travel to King City was
12 not a commute.

13 The attorneys in the District Attorney’s office and the Public Defender’s office do
14 receive some sort of reimbursement for travel to King City; the district attorneys are
15 provided cars to drive to King City, and the Public Defenders receive mileage
16 reimbursement. There is only one Employer travel policy, and to distinguish between
17 Grievant and these other employees is not defensible.

18 In other situations (Deputy Stewart and his commissioner, the AT&T golf
19 tournament) the employer has also recognized its responsibility to provide time and
20 mileage reimbursement in circumstances similar to Grievant’s travel to King City.

21 Grievant traveled to King City on 193 days in 2003, 2004, and 2005. She should
22 receive mileage reimbursement and paid time for this travel.

1 **F. POSITION OF THE EMPLOYER**

2 There is no prohibition of a “split” duty assignment in the Agreement.

3 Grievant’s assignment during this period of time was not a “split” assignment, as
4 her work location is, by practice, wherever her assigned judge is located.

5 The Travel Policy requires that the employee be traveling on employer business.
6 Here, Grievant was simply commuting to work.

7 Grievant’s assignment in King City was not temporary, as it lasted 20 months.

8 Deputy Stewart’s situation is distinguishable because he was required to change
9 work locations during the work day, to be with his assigned court commissioner.

10 The AT&T grievance settlement is not precedent for this case. Deputies
11 volunteered for this assignment, and the grievance was settled by providing them
12 additional minutes to procure patrol cars for this assignment.

13 The Special Operations grievance was a dispute over when deputies went “on
14 the clock,” not a question of split duty assignment.

15 Granting the grievance would impose unreasonable and illogical burdens on the
16 department.

17 The fact that Grievant prefers to leave her weapon in her locker at the Salinas
18 courthouse, rather than take her gear home and use a gun lock or put it in the locking
19 gun cabinet at her home, does not convert her commute to work time.

20 The grievance did not request, nor was it discussed during the grievance
21 process, that an overtime claim was involved. Grievant can not now raise that claim.

G. OPINION

In this case of contract interpretation, the Union bears the burden of going forward and the burden of persuasion with respect to its claim that the Employer violated the Agreement. This Arbitrator uses the term “burden of going forward” for a specific purpose. That purpose is simply to emphasize for the parties that the Arbitrator expects to receive the evidence that both parties decide to present and then determine what the evidence proves, regardless of the source of the evidence. It is only if there is insufficient evidence on an issue that the party with the “burden” is prejudiced. The “burden of persuasion” means, to this Arbitrator, that if the evidence as a whole fails to establish the contractual right urged by the Union, the grievance will be denied.

Here, both parties raised a number of issues and provided evidence on various circumstances attempting to persuade the Arbitrator to accept their position. As discussed below, some of the issues and evidence do not seem to provide assistance in the interpretation of the contract issue here. Also, on the whole, the evidence fails to persuade the Arbitrator that under the circumstances here, the Grievant is entitled to the mileage reimbursement and the travel time sought. Therefore, the grievance will be denied.

Both parties provided evidence and argument on the issue of Grievant’s “Main or Regular Place of Work.” The Arbitrator is not persuaded by either party’s arguments here, for the simple reason that the evidence in this record does not establish that this provision of the Employer’s Travel Policy has any effect on Grievant’s claim. The Arbitrator has carefully reviewed the documentary evidence and the testimony, and cannot determine any basis for the argument that the Grievant’s main or regular place of work here provides support for her claim to mileage and travel time. While the Arbitrator does not accept the Employer’s argument that Grievant’s “main” place of work

1 during the relevant time period was King City, the Union's argument that her main
2 location was Salinas does not help her because the policy in question specifically
3 addresses the issue and clearly requires that mileage from the main place of work is
4 reimbursable only if the Grievant was required to report to her main place work before
5 traveling.⁷ Though the Union argues that Grievant was "required" to report to Salinas,
6 the Arbitrator determines, as argued by the Employer, that Grievant chose to go to
7 Salinas before traveling to King City. Grievant is not faulted for her decision, but her
8 decision was based upon her personal preference and not any Employer requirement.

9 The Union also argues that an Employee can have only one main or regular
10 place of work. This position is then used to argue that a "split" assignment is prohibited.
11 Again, the Arbitrator finds no support for that position in the record here. After careful
12 review of the evidence presented and the documents submitted, the Arbitrator does not
13 find any provision of the Collective Bargaining Agreement or the Employer's policies
14 which establishes a prohibition on assignment such as Grievant had in this case.

15 The evidence that district attorneys are provided a county vehicle for travel and
16 that public defenders are provided mileage is not persuasive. The Arbitrator does not
17 accept the Employer's argument that these personnel are in different bargaining units
18 and are professional employee as valid distinctions, because, as argued by the Union,
19 the same policy applies to these employees, and that policy provides no basis for the
20 distinctions argued by the Employer. However, the evidence is insufficient concerning
21 the public defenders, and the Arbitrator would require much more solid evidence upon
22 which to agree with the Union's argument. As to the district attorneys, the evidence is in
23 conflict, and the Union provided no rebuttal to the Employer evidence that district
24

25 ⁷ County Travel Policy, V.B.2.a)(5)

1 attorneys are required to report to Salinas before traveling to King City. Thus, it
2 appears that the treatment of the district attorneys meets the requirement of County
3 Travel Policy section V.B.2.a)(5).

4 Similarly, the evidence introduced to show a past practice is insufficient to
5 support the Union's position.

6 1. Deputy Stewart's travel was during the work day, when he was required to
7 report to one courthouse, then was required to travel to another courthouse
8 during his workday. He was entitled to reimbursement for this schedule.
9 When this travel was no longer required, his entitlement ceased. This does
10 not support the Union's position.

11 2. The AT&T grievance, according to all the evidence in this record, concerned
12 the fact that the Employer had not paid the deputies for all time worked.
13 Review of the documents submitted concerning this grievance, UN EX 10,
14 supports this conclusion. The issue there was very different from the
15 Grievant's situation.

16 3. The Special Enforcement Unit's grievance, from the evidence here,
17 establishes that the deputies reported to one station and were assigned to go
18 to another, or where the required 10 days notice was not provided. As
19 Sergeant Dahmen testified, if they had received 10 days notice, there would
20 be no basis for the grievance. They were paid for time "on the clock"
21 beginning with their arrival at work at the station assigned.

22
23 Though not necessary to the decision here, the Arbitrator does note that the
24 Employer's argument that Grievant's travel time claim may not be considered because
25

1 she did not raise it until the hearing is incorrect. The issue was raised in her first letter
2 in this matter, on January 9, 2004, and several times thereafter.

3
4 **H. AWARD**

5 The Union has not met the burden of persuasion in this matter. The Grievance is
6 denied.

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9 **Dated this 12th day of March, 2006**

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Dennis L. Isenburg, Arbitrator